



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD O. WATTS,)	
)	
Complainant,)	Case No. LA-PN-145
)	
and)	Administrative Appeal
)	
LOS ANGELES COMMUNITY COLLEGE)	PERB Order No. Ad-291
DISTRICT,)	
)	December 9, 1998
Employer.)	

Appearances: Howard O. Watts, on his own behalf; Lisa Lerner Miller, Associate General Counsel, for Los Angeles Community College District.

Before Caffrey, Chairman; Johnson and Amador, Members.

DECISION

JOHNSON, Member: This case comes before the Public Employment Relations Board (Board) on appeal by Howard O. Watts (Watts) of a Board agent's dismissal (attached). The Board agent determined that the Los Angeles Community College District (District) did not violate sections 3547(a), (b) or (c) of the Educational Employment Relations Act (EERA)¹ by presenting an

¹EERA is codified at Government Code section 3540 et seq. Section 3547 states, in pertinent part:

(a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become

initial proposal regarding changes to the school calendar in interest-based bargaining terminology on February 11, 1998.

After a review of the entire record, including the Board agent's dismissal, Watts' appeal and the District's response, the Board hereby affirms the Board agent's dismissal and adopts it as the decision of the Board itself.

ORDER

The public notice complaint in Case No. LA-PN-145 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Amador joined in this Decision.

informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD O. WATTS,)	
)	
Complainant,)	Case No. LA-PN-145
)	
v.)	DISMISSAL OF PUBLIC
)	NOTICE COMPLAINT
LOS ANGELES COMMUNITY COLLEGE)	
DISTRICT,)	September 3, 1998
)	
Respondent.)	
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This decision finds that the Los Angeles Community College District (LACCD) did not violate section 3547(a), (b), and (c) of the Educational Employment Relations Act (EERA)¹ by the presentation of a calendar initial proposal using interest-based bargaining.

¹The EERA is codified at Government Code section 3540 et seq. Section 3547 provides, in pertinent part:

(a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

BACKGROUND

On March 16, 1998,² Howard O. Watts (Watts or Complainant) filed a public notice complaint against the LACCD with the Public Employment Relations Board (PERB).³ The complaint alleges that the LACCD's February 11 school calendar proposal was not sufficiently developed for the public to comprehend and was not subsequently clarified at the February 25 Board of Education public meeting.

In its response to the complaint, LACCD explains that it is engaged in interest-based bargaining with the faculty unit, a method which tends to produce initial proposals which are more general and less adversarial than traditional positional bargaining. Nevertheless, the LACCD asserts that its proposal contained enough specificity to adequately inform the public so that it could respond to the proposal.

Investigation of the complaint, including a review of the tape recordings of the relevant Board of Trustee meetings, revealed the following.

FACTS

The LACCD's initial proposal was presented at a public Board of Trustee meeting on February 11 as an informative item. The proposal, in its entirety, states:

Article 10. Calendar

²All dates herein refer to calendar year 1998 unless otherwise noted.

³The complaint was in abeyance from May 12 to July 1.

As referenced in Article 10.C of the Agreement, the District has an interest in bargaining to authorize one or more alternate year-round calendars, which, if agreed to, would be available to colleges wishing to move part or all of their instruction to the alternate calendar(s). Included in the alternate calendar bargaining would be related issues including, but not limited to, calendar, assignment and workload, alternate basis for retirement credit, determination of participation by faculty, hourly assignments and seniority, rates of pay, holidays and vacation days, class size, evaluation, leaves, transfer and reassignment, insofar as such issues relate to the proposed alternate calendar(s).⁴

As Watts explains in his complaint, the proposal is the culmination of approximately three years of study and discussion by District staff, trustees and students, which included at least one public meeting where Watts spoke in opposition to the alternate year-round calendar. During this same time, a student group conducted a survey and produced a video regarding this issue. Finally, progress reports from a committee charged with developing an information base on the issue have been presented at Board of Trustee public meetings.

The LACCD's February 25 meeting allowed the public an opportunity to speak regarding the proposal. Watts spoke at the

⁴Article 10.C of the Agreement between the LACCD and the American Federation of Teachers College Guild Local 1521, CFT/AFT, AFL/CIO, effective September 30, 1996 through June 30, 1999, states:

This Agreement does not preclude any of the nine colleges or other District programs from implementing any aspect of a year round calendar by joint agreement of the AFT and the District.

meeting and asked a litany of very specific questions.⁵ No oral clarification of the proposal was given by LACCD at the meeting.⁶

ISSUE

Was LACCD's initial proposal for a year-round calendar sufficiently developed to meet the requirements of Government Code section 3547?

DISCUSSION

The purpose of implementing the public notice provisions of Government Code section 3547 is stated in subsection (e):

. . . that the public be informed of the issues that are being negotiated upon and have full opportunity to express their views on the issues to the public school employer, and to know of the positions of their elected representatives.

PERB has interpreted this section to mean that the initial proposals presented to the public should be sufficiently developed to allow the public to comprehend them. (Palo Alto Unified School District (1981) PERB Decision No. 184. (Palo Alto).) An initial proposal which simply states the subject matter to be negotiated, such as "wages", does not adequately inform the public of the issues to be bargained by the employer

⁵Watts' testimony often contains scolding, threatening and derogatory comments aimed at the Board of Trustees and District personnel, along with a recitation of public notice cases where he has prevailed in another jurisdiction. It is unclear how these comments relate to the issue at hand.

⁶Watts states in his complaint that there would be three year-round calendars. It is not clear from what source this number was derived.

and the exclusive representative. (Ibid.) However, PERB has also found that the actual dollars and cents cost of a proposal need not be presented to the public. (Los Angeles Community College District (1989) PERB Decision No. 740.)

If an initial proposal is not specific as written, PERB has held that an oral clarification at a public meeting may be sufficient to cure any defects or insufficiencies in the proposal. (Ocean View Teachers Association (Busch) (1992) PERB Decision No. 943; Ocean View School District (Busch) (1992) PERB Decision No. 938.)

PERB has found that the use of a new or different bargaining technique such as the interest-based, collaborative bargaining approach does not relieve the parties of their statutory burden to provide public notice. (Ocean View Teachers Association (Busch), supra, PERB Decision No. 943.)⁷ The Board has also recognized that while the interest-based bargaining approach may hold many advantages for the parties, it may also raise some public notice concerns.

It is clear, however, that the interest-based approach to bargaining tends to produce initial proposals which do not include a great deal of specific details. To the extent EERA's public notice requirement is interpreted to mandate that initial proposals include detailed information concerning

⁷Watts insists during his public testimony that interest based bargaining is not sanctioned by section 3547 and that traditional bargaining is what is required. In fact, section 3547 does not dictate bargaining methods to the parties. In addition, Board decisions clearly recognize it as a legitimate process, albeit one where the participants must be sensitive to PERB's public notice provisions.

subjects to be discussed during negotiations, the interest-based approach makes that task more difficult. The Board takes notice of the potential inconsistency between EERA's public notice requirement and the tendency for initial proposals under the interest-based bargaining approach to be general in nature. (Los Angeles Unified School District (1992) PERB Decision No. 964.)

Therefore, the Board urged parties using this approach to strive to insure that they do not fail to fully inform the public of the issues to be negotiated in collective bargaining.

LACCD's initial proposal in this case reflects its attempt to follow a collaborative model of bargaining that stresses interests rather than positions. The calendar proposal's focus is to negotiate additional calendar options for the college system and specifically recognizes that a myriad of related items may flow from the parties' discussions.

At the February 25 meeting, Watts asked for specific information regarding the exact number of year-round calendars contemplated, the campuses affected, what parts of instruction would be affected, whether assignments will be made by an administrator or chosen by a faculty member, the number of hours per week and how they will be determined, which faculty members will be affected, how seniority will be calculated, the rates of pay for participating faculty, the number of holiday and vacation days, the number of students in a class, who will administer evaluations, what types of leaves will be provided to participants, what the transfer and reassignment policies will be, etc.

These questions indicate an understanding of the proposal and its possible ramifications. Answers to his inquiries will be formulated by the parties as they engage in negotiations, not at this preliminary stage of the process. Finally, this issue has been the subject of discussion for three years during which the public has been kept informed and Watts himself has conveyed his opposition. Thus, it is difficult to imagine that Watts did not comprehend the District's February 11 school calendar proposal in order to express himself as allowed by section 3547.

CONCLUSION AND ORDER

Based on the facts, law and precedent discussed above, it is determined that the Los Angeles Community College District has not violated Government Code section 3547 (a), (b), or (c) since its calendar proposal adequately informs the public of the issue which will be the subject of negotiations. Therefore, this public notice complaint is DISMISSED without leave to amend.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, any party adversely affected by this ruling may appeal to the Board itself by filing a written appeal within twenty (20) calendar days after service of this ruling (California Code of Regulations, title 8, section 32925) . To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (California

Code of Regulations, title 8, section 32135). Code of Civil Procedure section 1013 shall apply. The Board's address is:

Members, Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

The appeal must state the specific issues of procedure, fact, law or rationale that are appealed, must clearly and concisely state the grounds for each issue stated, and must be signed by the appealing party or its agent.

If a timely appeal of this ruling is filed, any other party may file with the Board itself an original and five copies of a statement in opposition within twenty calendar days following the date of service of the appeal (California Code of Regulations, title 8, section 32625). If no timely appeal is filed, the aforementioned ruling shall become final upon the expiration of the specified time limits.

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and the San Francisco Regional Office. A "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See California Code of Regulations, title 8, section 32140 for the required contents and a sample form.) The appeal and any opposition to an appeal will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file an appeal or opposition to an appeal with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (California Code of Regulations, title 8, section 32132) .

Dated: September 3, 1998

By:
Anita I. Martinez
Regional Director